

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

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In Re:) Case No. 19-30088
PG&E CORPORATION AND PACIFIC) Chapter 11
GAS AND ELECTRIC COMPANY) San Francisco, California
Reorganized Debtors.) Tuesday, May 9, 2023
10:00 AM
MOTION FOR PARTIAL SUMMARY
JUDGMENT OF ISSUES IN
REORGANIZED DEBTORS OBJECTION
TO CLAIM 2090 AND CLAIMANT'S
RESPONSE THERETO FILED BY
INTERESTED PARTY AMIR
SHAHMIRZA (13478)
PG&E'S OPPOSITION TO MOTION
FOR PARTIAL SUMMARY JUDGMENT
AND COUNTER-MOTION FOR
SUMMARY JUDGMENT; MEMORANDUM
OF POINTS AND AUTHORITIES
[13567]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DENNIS MONTALI
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES (All present by video or telephone):
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1 SAN FRANCISCO, CALIFORNIA, TUESDAY, MAY 9, 2023, 10:00 AM

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3 (Call to order of the Court.)

4 THE CLERK: Calling the matter of PG&E Corporation.

5 THE COURT: All right. Appearances. Start with Mr.
6 Jacobson. Mr. Jacobson, we need a mic and a camera from you.

7 While we're waiting, let's get the appearances from
8 Mr. Rupp and Mr. Lamb.

9 MR. RUPP: Good morning, Your Honor. Thomas Rupp of
10 Keller Benvenutti Kim on behalf of the reorganized debtors.

11 THE COURT: All right.

12 MR. LAMB: Good morning, Your Honor. Steve Lamb, on
13 behalf of the reorganized debtors.

14 THE COURT: Thank you. Good morning, Mr. Lamb.

15 Mr. Jacobson, you with us now?

16 MR. JACOBSON: I hope so. Good morning, Your Honor.
17 Lawrence Jacobson, appearing for the claimant Komir, Inc., the
18 property owner.

19 THE COURT: Okay. You're going to go first. I
20 presume you want to reserve some time.

21 MR. JACOBSON: I do.

22 THE COURT: How much? How much time do you want to
23 reserve?

24 MR. JACOBSON: Twenty minutes.

25 THE COURT: Reserve twenty?

1 MR. JACOBSON: Yes.

2 THE COURT: Okay. So I have a question or two for the
3 preliminary for you then. We won't start the clock running.
4 Maybe this is buried in the volumes of stuff that you've
5 presented, but they are missing one fact. The lawsuit that was
6 originally filed in Superior Court back in the '70s named a lot
7 of defendants. But the ultimate judgment only names the City.
8 And what happened so that other defendants including PG&E?
9 Where did they go and why -- why are they bound or not bound by
10 that judgment?

11 MR. JACOBSON: Well, I don't know the disposition as
12 to all the individual parties, but everyone is bound because
13 it's an in rem proceeding.

14 THE COURT: Well, I understand that, but they were ==
15 PG&E and others were all defendants. And usually when there's
16 a judgment that concludes a matter of, you dispose of
17 defendants. You don't know specifically beyond that?

18 MR. JACOBSON: I do not. I have examined the entire
19 file, the thousands of pages. The judgment and order pertain
20 to PG&E to the extent that they are discussed in it. So --

21 THE COURT: No. I agree. I understand that. I got
22 that. You answered my question.

23 The other question I have is you got the tentative
24 ruling I issued. If I were to stick with that tentative, then
25 if I interpret your position correctly, your position would be

1 that you're entitled to partial summary judgment, and that
2 disposes of the -- sort of the easements going back to the --
3 really before the judgment and that's where we ended up, since
4 you didn't make a motion for partial -- I mean, you didn't make
5 a summary judgment on the merits, you would believe that where
6 we're still at issue is where the fact questions about whether
7 the events of 2018 are actionable or -- and/or whether -- or
8 whether PG&E has a legitimate prescriptive easement on the
9 property. Is that fair statement?

10 MR. JACOBSON: That is correct. And all of those
11 latter issues are subject to the factual decision.

12 THE COURT: Right. Okay. Okay.

13 MR. JACOBSON: Yes.

14 THE COURT: Go ahead. Those are my only preliminary
15 questions. And Mr. Lamb, if you wish to respond to them when
16 it's your turn, please feel free to. But Mr. Jacobson, go
17 ahead and take your ten minutes. And I'll try to listen and
18 not interrupt.

19 MR. JACOBSON: Thank you. Well, interrupt as you
20 choose. That's usually productive.

21 I start with ten minutes because I want to focus on
22 what is the single sole critical dispositive issue. The
23 claimant's motion for summary judgment focuses on simply one
24 point: that the judgment of condemnation and the order of
25 condemnation extinguish all prior interest in the property.

1 Nothing else in any of the pleadings that have been filed
2 relates to that issue. That is the dispositive issue on the
3 motion that was filed.

4 THE COURT: So even though there are public easements
5 of record, the public record is overridden by the finality of
6 the judgment?

7 MR. JACOBSON: Correct.

8 THE COURT: So but I mean, if we put the -- if we put
9 the public record next to the judgment, they're inconsistent.

10 MR. JACOBSON: No, because the summary because the
11 judgment and the order of condemnation as a legal matter
12 extinguish and obliterate all those --

13 THE COURT: No, I understand. I understand. But Mr.
14 Jacobson, if I had a deed of trust on your house and you paid
15 off the loan and we didn't get around to reconveying it, you
16 and I, between the two of us, we would know that I don't have a
17 lien on your house, but the public record would show that I
18 have a lien on your house. So the public record, at least in
19 that recorder's office, shows something that that looks like an
20 easement even though the public record and the finale finality
21 of the superior court judgment abolishes it.

22 MR. JACOBSON: Correct.

23 THE COURT: Okay.

24 MR. JACOBSON: The public record also reflects a
25 subsequent later judgment and order of condemnation. That

1 eliminates the inconsistency.

2 THE COURT: Okay. I didn't remember that the -- I
3 mean, I should have known, but I didn't remember that the
4 superior court judgment was itself recorded. But I -- of
5 course, the record reflects that.

6 MR. JACOBSON: So the legal analysis that deals
7 specifically with the critical issues is in Komir's points and
8 authorities, page 12, line 1 to page 14, line 14, there are
9 three pages of detailed analysis of the Civil Code statute, the
10 1945 Law Review article, and a series of Supreme Court and
11 Ninth Circuit cases that deal with these issues. And I'll
12 identify them in a moment.

13 The opposition to those -- to that legal analysis,
14 such as it is or isn't, is in PG&E's opposition at page 3, line
15 24, to page 4, line 24.

16 So the points in authorities by Komir establish the
17 following: First, the condemnation case action is an in rem
18 proceeding. It's against the property. It is not against
19 persons or interests in property. And you can look at the
20 Duckett case at the United States Supreme Court, the Wisconsin
21 Law Review article, the Buckhart Ninth Circuit case, and the
22 U.S. versus 32.42 Night Acres, Ninth Circuit case, all stand
23 for that proposition.

24 Second, the condemnation establishes a new title.
25 This isn't an old title cleaned up or modified. It is a new

1 title where the condemning agency acquires title in fee simple
2 unless otherwise specified. As to parcel 2, the judgment in
3 the order define as to parcel 2 where the Komir property is
4 located, that it is taken in fee simple.

5 Third, with respect to any prior interests of record,
6 the point that you were raising a moment ago, the order -- the
7 judgment and order of condemnation and the language of the
8 cases, the area I've indicated states that those interests are
9 obliterated and extinguished as a matter of law. The prior
10 interests simply do not anymore exist because there is a new
11 title in fee simple that obliterates and extinguishes all of
12 those interests.

13 Finally, the fourth critical point is this. There is
14 a case that dealt with the circumstance of a condemning agency,
15 condemning in fee simple and then transferring to a third
16 party. So someone came into that case and said, well, you as
17 the condemning agency, took fee simple for a public purpose,
18 but then you sold it to someone else. So now that prior
19 interest reemerges, it springs back into interest.

20 And that is the Linda Vista Homeowners Association v.
21 Telecott Investors case. It's a 2015 California Court of
22 Appeal case. It's discussed in the section of the brief I
23 mentioned. And it says explicitly there is no quiescent
24 status. There is no reservation. It does not spring into
25 existence. Once the judgment and order of condemnation has

1 been made and recorded, all prior interest are gone, period.

2 Judge, that is the interest -- that's the issue before
3 the Court. If you look at PG&E's opposition, there's not one
4 case cited. They did not refer to the civil code statute.
5 They did not refer to the Law Review article. They did not
6 refer to the Supreme Court cases. They did not refer to the
7 Ninth Circuit cases. They referred to nothing. So there is no
8 legal support to the contrary.

9 So what is before you is one issue with the case law
10 in statute establishing that the interest are extinguished a
11 record. So we end up in the circumstance that you were
12 mentioning at the beginning. There are no recorded -- no
13 interest arising from prior recorded documents. 1901, 1910,
14 1923, whatever they are, they're gone. So the remainder of
15 this case will focus on the other issues. But for this motion
16 for summary judgment, there are no longer any prior easements
17 in favor of PG&E.

18 THE COURT: Partial -- what was partial summary
19 judgment.

20 MR. JACOBSON: Correct.

21 THE COURT: Partial. Yeah. Okay. No, I got it.

22 MR. JACOBSON: That's my opening.

23 THE COURT: Okay. Mr. Lamb, I presume you're taking
24 the lead here.

25 MR. LAMB: Thank you, Your Honor. And we'd like to be

1 able to reserve ten minutes in rebuttal if possible. I think
2 twenty minutes will cover it.

3 And the first thing that I want to point out, Your
4 Honor, is that we agree in relation to the tentative ruling it
5 relates to the issues that involve the prescriptive easement
6 issue, what I would view as a potential defense, statutes of
7 limitation and potentially damages. I think those would be the
8 issues that would be remaining on the board if the Court were
9 to retain the tentative as it stands.

10 Obviously, we would argue that the tender shouldn't
11 stand for the following reasons. First of all, I will concede
12 to you that this is a complicated issue. I think it's clear,
13 but it's not complicated.

14 And counsel has referred to the Linda Vista case.
15 That case is that an easement case. But this is not a point
16 where we need to quibble over the law because the law of
17 condemnation is not the issue. The issue is what is the scope
18 of the judgment? Because I would we all would agree, including
19 counsel for Shahmirza, that a judgment cannot confer more than
20 the initial complaint relates to. That is the fundamental
21 problem, Your Honor, because if you look --

22 THE COURT: Well, but hold on. Is that true? Have
23 you challenged the judgment? I mean, I agree with you as a
24 matter of principle. A court can't enter a judgment that's
25 more than it's asked for. But if the judgment becomes final,

1 it isn't challenged, can it be attacked collaterally? And you
2 haven't really attracted collaterally, have you?

3 MR. LAMB: I don't think it's attacked collaterally.
4 It's pursuant to the judgment. And I'll explain this further
5 because it relates back to other matters. It's in fee simple
6 with no easements or restrictions. And that would be
7 inconsistent with what the state and Caltrans has done after
8 that. But if you look at the 1974 complaint that was filed by
9 the State of California against the City and County of San
10 Francisco, this was to condemn the property. And it names PG&E
11 as a defendant only as to parcels 5A and 5B for an interest in
12 a right of way. And that is docket number 13478-6 at page 31.
13 Parcel 2, the only interests listed for parcel 2, which
14 includes the Komir property is large -- excuse me, parcel 2 is
15 larger than just the Komir property, but the Komir property is
16 consumed within parcel 2. The only interest listed for parcel
17 2 are the city and county of San Francisco. Those are the
18 owner, the USA as a lessee, and the county of San Mateo for
19 taxes and assessment. And that's at docket 13478-6, page 30.
20 So PG&E is not listed on parcel 2. And that means that the
21 complaint filed by the State that refers back to the judgment
22 has no effect and isn't relating to any easements held by PG&E
23 on parcel 2?

24 THE COURT: Well, where do we get some authority to
25 say that if you're a defendant, that you then can ignore

1 something that's in the specifics that refers to a parcel --
2 one parcel but not another? I mean, doesn't -- isn't that
3 something that should have been raised and could have been
4 raised that wasn't raised?

5 MR. LAMB: No. The complaint --

6 THE COURT: I understand that the complaint --

7 MR. LAMB: -- is not --

8 THE COURT: The complaint is what it is.

9 MR. LAMB: Right.

10 THE COURT: And you might have a more persuasive
11 argument if PG&E has never been brought into the suit, but it
12 was in the suit. So what I'm getting at is what authority do
13 you have that says PG&E is only in there regarding parcels 5A
14 and B? They're in there --

15 MR. LAMB: Because that --

16 THE COURT: -- as a defendant.

17 MR. LAMB: Because, Your Honor, that's what the
18 complaint says. The complaint says that this this particular
19 and it relates to the specific parcels. And if you look at
20 this, you can see that for example with parcels 3A -- and
21 that's on 13478-6, and it's on page 30, there's a reference to
22 the San Francisco Bridge Company for an easement. That relates
23 to parcels 3A, 3B, 3C. So the way this complaint was set up
24 and the way the judgment was set up was specifically as to the
25 defendants or the property to the extent it's listed in the

1 complaint.

2 THE COURT: So but, Mr. Lamb, what you want me to do
3 is to say, even though PG&E is a defendant and even though the
4 judgment was final forty years ago, that the language in the
5 judgment that would have cleared -- that clears parcel 2
6 doesn't bind your client because they weren't identifying with
7 parcel 2 in the original complaint. That's your argument?

8 MR. LAMB: It wasn't, Your Honor, that they weren't
9 identifying parcel 2. They specifically decided they were only
10 asking for whatever rights --

11 THE COURT: I understand. But did you make this
12 argument in your briefs?

13 MR. LAMB: Your Honor, I apologize if it wasn't clear.
14 I tried to lay this out.

15 THE COURT: Mr. Jacobson complains that you didn't
16 respond to any of his arguments. And now you're giving me an
17 argument that I don't think I've heard before.

18 MR. LAMB: I thought -- I apologize, Your Honor. I
19 thought that was contained within the argument. The problem
20 that I've had with this is it seems to me that the argument
21 keeps shifting every time I -- we go.

22 THE COURT: You know, you've said over time that the
23 argument has shifted. You know what? The argument before me
24 has not shifted. I wasn't the superior court judge. I wasn't
25 there at the outset when the demurrer was filed. I inherited

1 this case when this claim objection came up. And Mr. Jacobson
2 and his argument are only one argument that on this issue.

3 But my question to you is -- and it's fair to say I'm
4 looking at your opposition. And I want to see if there's any
5 discussion about what we would call the parcel 5 versus the
6 parcel 2 argument. And I don't I don't think there is. I'm
7 not saying that you waived it. I'm just trying to make sure I
8 didn't miss it. So did I miss it or is it not in there?

9 MR. LAMB: It's not in the brief.

10 THE COURT: Okay. All right. Go ahead.

11 MR. LAMB: Okay. And then if you look at the 1974
12 order of possession, which is document 13478-7 at page 4, that
13 states that the state was entitled to take property by eminent
14 domain in possession and ordered that the state is authorized
15 and empowered to enter upon and take possession and use said
16 property. A plaintiff is authorized and empowered to remove
17 therefrom any and all person obstacles, improvements, or
18 structure of any kind. And clearly that didn't happen as to
19 the Komir property, I don't think that there's a dispute at all
20 that that transmission line has been in place for decades. And
21 it's --

22 THE COURT: And there's no -- and you know what?
23 There's no dispute that prior to 2018, Mr. Shahmirza didn't
24 complain. He had a rent paying tenant for twenty years. He
25 bought the property with the lines at the height that they

1 were. And he didn't complain. And he entered into an
2 agreement that paid him some rent. And everything was fine
3 until 2018 when PG&E moved the towers and changed the height.
4 And that's the first time the proverbial you-know-what hit the
5 fan. And here we are.

6 So the fact that it -- the fact that PG&E didn't
7 complain is consistent with Mr. Shahmirza was not offended by
8 what was going on until the new lines got repositioned, the new
9 level, you know what happened, 2018 events. Okay? Right?

10 MR. LAMB: That's correct.

11 THE COURT: Okay.

12 MR. LAMB: That's correct.

13 THE COURT: So why don't we -- why isn't any of this
14 other argument irrelevant? Why aren't we just focusing on this
15 as what were the rights of the parties beginning in 2018?
16 Which gets back to -- it gets back to the issue that Mr.
17 Jacobson believes is factual. And I think you can see it as a
18 factual issue.

19 MR. LAMB: It is the factual issue.

20 THE COURT: No, no. But what I'm saying is, isn't
21 this -- angels on a pin. The argument here isn't -- there's no
22 question who owns the title. There's no question -- and this
23 is not an adverse possession case. The question is whether
24 PG&E has a prescriptive easement or doesn't.

25 MR. LAMB: So I think -- I agree that that question is

1 still on the table. But I think that the issue of whether or
2 not we have these recorded easements and whether they're valid
3 is -- I think it's clear that they are valid because the
4 judgment does not extinguish that. The language of the
5 judgment does not extinguish it because it relates back to the
6 complaint.

7 THE COURT: Okay. I understand your point. But how
8 do you reconcile what you would call the valid easements with
9 the situation changed when there was such an agreement? There
10 was the 2018 agreement. And excuse me, I'm sorry, before 2018,
11 when there was an agreement to consent to the work and that
12 PG&E is --

13 MR. LAMB: Oh, Your Honor, that was --

14 THE COURT: The point is that PG&E did -- exceeded
15 that.

16 MR. LAMB: Your Honor, that was just a temporary
17 construction easement so that we could do a laydown of property
18 that went way further than what you're talking about.

19 THE COURT: But if I'm Mr. Shahmirza, I've got a --
20 I've got PG&E in there paying me -- paying rent for the
21 temporary stuff. And the tower is what it is. And the height
22 is what it is. And then all of a sudden in 2018 PG&E moves the
23 towers and lowers the wires. And that's when there's a
24 problem. So what difference does it make what happened in the
25 past? In other words --

1 MR. LAMB: Well, the --

2 THE COURT: -- take it differently. What were the
3 rights to the parties when that change occurred in 2018? Your
4 argument is, well, we go back to the recorded easements before
5 a century ago. Right?

6 MR. LAMB: Well, it's not quite -- it's not quite a
7 century, but it's been a long time.

8 THE COURT: Okay. Okay.

9 MR. LAMB: I think basically between 1910, in 1923,
10 there's four recorded easements. And I think --

11 THE COURT: Yeah. I know. I understand.

12 MR. LAMB: Everybody agrees with it. Okay. And those
13 are in the record. And then you've got Shahmirza's surveyor
14 who admits that the PG&E and easements exist.

15 THE COURT: No. Mr. Lamb, I'll rephrase my question
16 again. If you're right that those recorded easements were not
17 obliterated, then what do I make of the change of events or the
18 circumstances that were changed in 2018?

19 MR. LAMB: You make nothing of it, Your Honor, because
20 it's consistent with the easement.

21 THE COURT: I see. Okay. That's your point, that
22 it's consistent with the easement and therefore PG&E was free
23 to do what it chose to do.

24 MR. LAMB: Right. We're not acting any way that we
25 haven't acted for decades because it's our position that those

1 easements are still in effect. And what I think counsel for
2 Shahmirza is saying is when they narrowly read that judgment,
3 which does not, in their argument, relate back to the
4 complaint, which cannot be, that's because everything's
5 extinguished. And the problem with that, Your Honor, is if
6 that were true, that is completely inconsistent with how the
7 state is operating. And the facts are clear on that.

8 You know, for example, you've got the June 30, 1987
9 directors deed from the state to the Hildebrands.

10 THE COURT: Right.

11 MR. LAMB: That's at document -- I'm sorry, Your
12 Honor?

13 THE COURT: No, I was just acknowledging the
14 Hildebrand deed.

15 MR. LAMB: Okay. That's it. Document 13478-9, page
16 5. And that's talks about subject to special assessments, if
17 any, restrictions, reservations, and easements of record. And
18 it also specifically refers to this landscape and access
19 easement that now Mr. Shahmirza is saying was extinguished
20 back -- when the condemnation action, Your Honor. And if
21 that's true, that is completely inconsistent with how the state
22 operated. It's also completely inconsistent with the joint use
23 agreement, which also refers to the particular easements. And
24 we submitted that, although I understand that that Shahmirza's
25 counsel has objected to that and moved to strike that. But

1 just for the record, we've put that in the record. And we
2 believe that that further references it. And if this were not
3 true, the state would refer to that. And that that's pretty
4 clear.

5 There's also a state plat map that Shahmirza used in
6 support of the MSJ that refers to landscape and -- landscape
7 and access easements and that's at document 13478-9 at page 14.
8 So that's all consistent with what we've been talking about,
9 which is why I explained, Your Honor, that we've been operating
10 as if we have an easement because we have the easements. We
11 haven't done anything inconsistent with that. What's happened
12 is he believes that because we moved the tower and he claims
13 that we lowered the line, although I don't believe we did lower
14 the line, we just -- the lining is set up the same. You know,
15 there's no substantial change. And that really relates back to
16 the Gerrah (phonetic) case that counsel for Mr. Shahmirza
17 referred to, that there has to be a substantial deviation. And
18 I don't think there has been a substantial --

19 THE COURT: Well, that's a fact question.

20 MR. LAMB: That is a fact question. But what it --

21 THE COURT: I should tell you, in the first couple of
22 years that I was on the bench, which is now a long time ago, I
23 had a prescriptive easement case down near the airport. And we
24 actually had a trial at the site. I went and did a site visit,
25 so I was thinking about that and thinking, well, I wonder if I

1 had to go down to Highway 380 and have a site visit here to see
2 the towers. But anyway, go ahead.

3 MR. LAMB: Well, like I -- and again, it's
4 complicated, but I think it's clear. But to the extent that
5 the Court thinks it's not clear, what I would asked is if we're
6 already going to deal with these other two issues regarding
7 prescriptive easement and in relation to the statute of
8 limitations defense, then whether or not there's a valid
9 recorded easement, you know, we haven't had the opportunity,
10 for example, to do discovery because this has all been on the
11 papers. We haven't been able to do discovery of the state. We
12 could get -- we could get that. I'm sure we could probably get
13 more documentation that shows that the state is consistent --

14 THE COURT: Well, who prevented you from doing
15 discovery? You filed a very brief response to the motion for
16 judgment. You didn't ask for more time to do discovery. And
17 you really didn't highlight the argument you've just made. So
18 I have to decide whether you really can make this argument.
19 Mr. Jacobson, I'm sure, might tell me that you waive this
20 argument, and I don't know that.

21 But what I'm getting at is when there's a summary
22 judgment motion and the opponent says, gee, I should have the
23 right to take discovery, my answer is read the federal rules.
24 It tells you to ask for discovery if you need time to propose a
25 summary judgment motion. That didn't happen.

1 MR. LAMB: Well, like I said, Your Honor, I believe
2 it's complicated, but it's very clear that that judgment in
3 condemnation does not act to eviscerate or expunge or eliminate
4 those easements. Because when you look at that complaint,
5 which is rolled into the judgment, that's the reason for the
6 judgment.

7 THE COURT: Mr. lamb, you've said that -- you've said
8 that three times. And what I told you this until this
9 morning's argument, I don't think I heard the argument that it
10 was only parcel 5 where he was indicated and not parcel 2. I
11 read I read all your briefs twice. And I led to the -- I came
12 with the tentative ruling because Mr. Jacobson persuaded me
13 fairly well that this was a nonissue. And now you're saying,
14 well, wait a minute, go back and read the complaint. And
15 again, Mr. Lamb, I'm not faulting you. I'm just telling you I
16 got to figure out what to do about it.

17 Go ahead and -- you want to reserve -- you said you
18 want to reserve ten minutes. So go ahead and use a couple more
19 now, and then I'll let Mr. Jacobson respond. And you'll
20 have --

21 MR. LAMB: I'll reserve now, Your Honor. That's fine.

22 THE COURT: Okay. Okay. Mr. Jacobson?

23 MR. JACOBSON: Yes. Thank you.

24 A couple of conceptual thoughts here. First, none of
25 the -- nothing that counsel just argued is in his papers. It's

1 all new, the first point.

2 The second is, he didn't cite any law for anything.
3 There's still no legal support for anything he said.

4 THE COURT: Well, there is little support from law
5 school 101, that you can get in a complaint more than you ask
6 for.

7 MR. JACOBSON: We're going to get to that.

8 THE COURT: If I sue you to declare a lien a Black
9 Acre, I can't slip a judgment under the judge's nose to give me
10 my lane on White Acre, right? So that's basic.

11 MR. JACOBSON: Well --

12 THE COURT: Okay.

13 MR. JACOBSON: He cited nothing.

14 THE COURT: Okay.

15 MR. JACOBSON: The objector that provided no
16 authority.

17 Third, these arguments went really all over the board.
18 There was no consistency to them. There was a collateral
19 attack with the argument about collaterally attacking the
20 judgment.

21 THE COURT: Oh, I made that argument. I mean, I'm the
22 one that said it.

23 MR. JACOBSON: Well, I'm going to make it too.

24 THE COURT: Okay.

25 MR. JACOBSON: That's what he was attempting to do.

1 There was an argument about the scope of the judgment
2 specifically. And we'll get to that because the specific part
3 deals with the money aspect of condemnation. There was a
4 reference to the order for possession. And that's an
5 intriguing argument because the order of possession refers to
6 parcel 2. And it says -- and has the effect as a matter of law
7 of giving the state has the condemner the total exclusive right
8 to the property. As of the entry of that order for possession,
9 PG&E and he had no right to have anything there. That's what
10 the judgment of the Superior Court says. As of the entry of
11 this order for possession, you, State of California, are
12 entitled to the exclusive use and possession. There's
13 nothing --

14 THE COURT: Well, possession of that -- it's just as a
15 matter of condemnation procedure, the order of possession
16 precedes the final judgment. Right?

17 MR. JACOBSON: IT does.

18 THE COURT: Okay. But, I mean, it's sort of like a
19 temporary relief before you get your final relief. And doesn't
20 the final judgment then subsume and sort of overtake anything
21 that's interim?

22 MR. JACOBSON: Yes, but with an argument that it had
23 some effect that favors PG&E. I'm telling you the contrary.
24 It is an interim order. But what it does is gives the state
25 from that point forward the exclusive use and exclusive right

1 to have anything on that property.

2 THE COURT: But I think Mr. Lamb's argument is that's
3 fine, but it doesn't bind PG&E because PG&E wasn't linked to
4 parcel 2 in the original complaint.

5 MR. JACOBSON: We're going to shift to that in a
6 minute.

7 THE COURT: Okay.

8 MR. JACOBSON: There was a comment about Surveyor
9 Mahoney admitted that these prior arrangements existed. He
10 never admitted any such thing. He did a record of survey,
11 number 3259, approved by the county Surveyor and recorded by
12 the county surveyor that says there is no such thing as any
13 transmission line easement. That is the county's survey. And
14 there's no electrical transmission lines. And that's 2018.

15 So there's a reference about the Hildebrand deed. The
16 Hildebrand deed, director's deed did what directors Deeds do.
17 It calls out any specific easement that exists. And the only
18 easement was the landscaping easement. So every one of
19 those -- every one of those arguments that wander around
20 collateral issues really support Komir's.

21 But now let's get past the general comments and look
22 at the legal aspect of this. All of -- this idea that that the
23 complaint or the judgment doesn't include PG&E ignores the one
24 of the basic propositions that I was expressing to you. It's
25 an in rem proceeding. It extinguishes -- it's a new title. It

1 extinguishes all prior interest.

2 And if you look at my brief, the top of page 13,
3 there's a specific discussion of this issue. There's a
4 reference to the Burkhart case, which is Ninth Circuit, that
5 quotes Duckett, which is the U.S. Supreme Court. The quote is
6 as follows: "The taking was not of the rights of designated
7 persons in the property but of the property itself. An
8 unqualified taking in fee by eminent domain takes all interest
9 as it takes the race and is not called upon to specify the
10 interest that happen to exist.

11 THE COURT: Well, but as a matter of due process,
12 would you get an in rem judgment against the defendant who
13 you've never named in the first place?

14 MR. JACOBSON: Yes.

15 THE COURT: You could?

16 MR. JACOBSON: Yes.

17 THE COURT: A stranger? So if there's an in rem
18 action on Black Acre and I claim Black Acre but I have never
19 brought into the lawsuit, then am I really bound by that if I
20 never have notice of it?

21 MR. JACOBSON: Yes.

22 THE COURT: Okay. Well, that's a hypothetical
23 because PG&E was a defendant.

24 MR. JACOBSON: Yes. And the judgment and the order of
25 condemnation reflects its involvement in the case because of

1 the language about if the lines are removed from various
2 places, who will pay for them. So the interests of PG&E across
3 the board were considered. PG&E was not a stranger to that
4 case.

5 THE COURT: No, I understand. And I -- and that's why
6 in my hypothetical is only that. And I go back to sort of
7 basic concept of can you really be bound by an in rem matter if
8 you never knew about in the first place. And I'll concede that
9 there are certain areas of law, admiralty for example and
10 perhaps condemnation, where the attempt -- the process is
11 satisfied. We don't have to speculate on strangers. PG&E was
12 not a stranger to the litigation. I don't know what would have
13 happened if the complaint had not mentioned parcel 2, but that
14 isn't the case. Parcel 2 is one of the twenty-two parcels. So
15 it was in the in the bucket of race that was dealt with by the
16 court, I think, I believe, right?

17 MR. JACOBSON: And there has been forty years --

18 THE COURT: Yeah, right.

19 MR. JACOBSON: -- for PG&E to go make this argument.
20 And there's been five years since 2018 that they could have
21 made some kind of an argument to this effect.

22 THE COURT: Well, but what I said is that there was no
23 issue here between Mr. Shahmirza on the one hand and PG&E on
24 the other until 2018.

25 MR. JACOBSON: Yes.

1 THE COURT: Mr. Shahmirza bought the property with
2 powerlines in place and was happy as can be presumably until
3 something happened in 2018.

4 MR. JACOBSON: Yes. But --

5 THE COURT: Okay.

6 MR. JACOBSON: I'm going with counsel's argument that
7 we're hearing for the very first time and not in his brief and
8 with no authority. If there was an issue of the sort he's
9 describing, they've had five years to deal with it. If anybody
10 has a floating position here, it's PG&E. If you look at their
11 brief, their brief, which is dead wrong in saying that the
12 reason that condemnation didn't affect their easement was
13 because it referred to unless taking lesser interest and has
14 been demonstrated --

15 THE COURT: You made a very persuasive argument about
16 that. And you're right. Mr. Lamb didn't respond to that very
17 much. He sort of then goes to the prescriptive easement
18 doctrine. I got -- I grant you.

19 MR. JACOBSON: And so that's my point. Now, PG&E is
20 transitioning to some new argument we're hearing the first time
21 that it's had at least five years to deal with and is contrary
22 to the law in the first place. None of what he says makes any
23 difference because the condemnation establishes the new title
24 and extinguishes all the prior interest.

25 So I'd like to reserve the rest of my time.

1 THE COURT: Well, I don't think -- it's a little bit
2 awkward. We have two motions and one reservation. And I
3 didn't complain -- or didn't say that Mr. Lamb couldn't rebut.
4 But I think you've got to make the rest of your argument. And
5 I am not going to -- you're not going to fall through a trap
6 when the time runs. But I'd like you to conclude your
7 argument. And I'm going to let Mr. Lamb responded and call it
8 a -- unless there's something that I want to raise. So is
9 there anything else you want to add?

10 MR. JACOBSON: If I could have just a moment.

11 THE COURT: Yes, sure.

12 MR. JACOBSON: My other thought would be that the
13 situation is -- the issue is not complicated. These documents
14 are 100 years old. And the condemnation is, what, forty years
15 old. And the change of circumstance occurred in 2018. And so
16 you can talk about a lot of detail about any of that, any of
17 those events or topics. But it doesn't matter because Komir
18 framed this motion for summary judgment extremely narrowly and
19 to deal with one legal issue. And nothing PG&E has said and no
20 authority has been cited by it to contradict the basic concepts
21 that I articulated in the beginning and that are our points and
22 authorities in this section that I've described to you.

23 THE COURT: No. But look. That's what you said
24 before. And that's what persuaded me to write my tentative.
25 But you don't win the case if you get your summary judgment.

1 You simply don't lose it on the permanent easement issue. And
2 you might win your case if I say that that PG&E did not
3 establish a prescriptive easement on the current situation.

4 But what do I do if indeed the facts come out the
5 other way? I mean, if the facts come out the other way, even
6 if I accept all of your arguments from the judgment, we still
7 go back to what happened in 2018.

8 MR. JACOBSON: I agree. The purpose of this motion
9 was to get rid of this claim about rights from a recorded
10 easements. That's all it's about.

11 THE COURT: Yeah, right. Okay. So let's -- so take a
12 snap -- tell me what were the rights of the parties vis a vis
13 one another when Komir bought the property. In other words,
14 taking your view that the in rem, if you use that great word,
15 obliterate -- the easement was so obliterated. But the fact is
16 there were power lines over this property for 100 years. So
17 what did Mr. Shahmirza take? He took some property,
18 two-point-something acres, with power lines going across it.

19 MR. JACOBSON: Yes. And there were recorded
20 documents.

21 THE COURT: But what was he --

22 MR. JACOBSON: There were power lines.

23 THE COURT: But what were they trespassers or did he
24 consent to their being there?

25 MR. JACOBSON: Well, part of my reason for making this

1 motion the way I did is those issues, though legitimate for
2 some other conversation, don't impact the effect of the
3 condemnation. Whatever he thought, whatever was the
4 relationship, whether the recorded documents are themselves
5 valid or not, whether there were breaches by PG&E, whether
6 there were waivers or excuse or anything else, none of that
7 matters for the motion for partial summary judgment that I
8 argue.

9 THE COURT: But Mr. Jacobson, that's being a little
10 hyper-technical on the legal setting. I'm not looking at the
11 ultimate exit strategy. So these folks can go their separate
12 ways as much as you can do it if you have power lines across
13 your property. So at the end of the day, if I were to
14 determine that that there is a prescriptive easement across the
15 property, then that's the end of the day and your client loses.
16 Right? And if I determine that PG&E and they didn't establish
17 its rights under a prescriptive easement because it had nothing
18 that pre-dated -- I mean, that survives the prior judgment,
19 then what? Then what's the resolution? It's still probably an
20 economic recovery for your client, right? The power lines are
21 still going to be across his property, I presume.

22 MR. JACOBSON: Well if --

23 THE COURT: Pardon me?

24 MR. JACOBSON: I'm sorry I interrupted. I thought you
25 were done.

1 THE COURT: I just said I assume at the end of the
2 day, even if he loses, the remedy is to compensate your client.
3 It's not to force the the towers to be moved somewhere, is it?

4 MR. JACOBSON: Here's what --

5 THE COURT: Look, and I'll rephrase my question. My
6 job is to decide the matters that are presented before me. I
7 agree. But, you know, I'm a bankruptcy judge. And you're a
8 bankruptcy lawyer. And bankruptcy people look for solutions.
9 And so I'm looking at, well, what is the ultimate exit plan
10 here. And I'm assuming Mr. Shahmirza and his company want to
11 own the property. And obviously PG&E wants to continue to
12 transmit power lines. So isn't there an economic solution here
13 at some point?

14 MR. JACOBSON: Let me -- can I answer it this way?

15 THE COURT: Yes.

16 MR. JACOBSON: Here's what I envision as an answer to
17 your basic question. Where do we go from here and how does
18 this get resolved?

19 THE COURT: Yeah.

20 MR. JACOBSON: A main reason for filing this motion
21 was to limit the scope of the issues that need to be resolved.
22 So this motion eliminates any argument that whatever rights
23 that PG&E has or hasn't are based on prior recorded
24 instruments, because the condemnation extinguished and
25 obliterated them. So that will leave the property with

1 transmission towers and lines affecting it. And it will leave
2 for your determination the existence or not of a prescriptive
3 easement in or post-2018 when the lines were relocated. And
4 then the scope of that prescriptive easement, if it exists,
5 what towers, what height, location of lines, compensation to be
6 paid for the prescriptive use, damages to the extent that they
7 are involved as a component. But that is a discrete set of
8 issues to be decided by itself on the prescriptive easement
9 claim that's the subject of the factor in the countermotion.
10 But Komir's motion has as the salutary effect of reducing the
11 issues to be decided to just that package of convention.

12 THE COURT: Yeah, I know, I know, I know. I know. So
13 one more question for you. If I were to stick with the
14 tentative, leave aside any appeals, and I reject Mr. Lamb's
15 argument not -- without even saying why I reject it, but I
16 reject it, then what do we do? Do we set it for trial? Do we
17 set it for further discovery? Do I -- there's no countermotion
18 for -- you didn't make a motion for a judgment, total complete
19 judgment. And PG&E has made its motion, its countermotion.
20 But obviously, the tentative would deny that.

21 So I guess what I'm asking is if the permanent
22 easement -- the obliterated record easement is gone from the
23 from the issues, what do you see happening next in this
24 litigation in this Court?

25 MR. JACOBSON: I see a case management conference at

1 which there is a discussion of issues that there is a
2 formulation of a discovery schedule and --

3 THE COURT: okay.

4 MR. JACOBSON: -- a trial date set or a subsequent
5 trial setting conference date established, and perhaps as a
6 part of that process in the federal manner of proceeding, to
7 have the parties make a restatement of issues to more
8 specifically define the surviving claims. That's not
9 necessary, but that sometimes it has a practical benefit.

10 THE COURT: And maybe the parties that go back to the
11 mediation room too, huh?

12 MR. JACOBSON: Yes.

13 THE COURT: Okay. All right. Thank you.

14 MR. JACOBSON: I think that's just a conventional way
15 of proceeding. That's what we would do in any case. We --

16 THE COURT: I just wanted to hear it from you.

17 MR. JACOBSON: Okay.

18 THE COURT: Okay. Mr. Lamb, you have at least 10
19 minutes. And I'm not I'm not keeping an exact time clock on
20 it. You know where we are. So it's your turn.

21 MR. LAMB: Your Honor, the comment here keeps going
22 back to in in rem, in rem. It is in rem. But the rem is
23 defined by the scope of the complaint. You can't disassociate
24 and divest the two. Otherwise, it just makes no sense. If you
25 look at, you know, parcels 5A, that refers to the PG&E

1 right-of-way. There's other easements that are referred to.
2 If they're not included, then clearly what the State is looking
3 for is in rem as defined by the complaint, which does not
4 include the easements and other rights that PG&E has. And to
5 find otherwise would just be nonsensical, given the facts of
6 what have happened.

7 THE COURT: You know, sometimes courts make errors in
8 judgment, but their judgments nevertheless, albeit erroneous,
9 are fine because we have jurisdiction to make error. We don't
10 have jurisdiction where we don't have jurisdiction. So if I
11 rule a judgment in favor of the defendant for the following
12 reasons, if I'm wrong, because it was inconsistent with the
13 complaint, it's still it's still a final judgment unless it's
14 attacked in some fashion. And I think what Mr. Jacobson has
15 complained about, and frankly, I'm raising my question too, why
16 do you get to raise this issue at an argument on a dispositive
17 motion? And the answer is, well, I'm sorry, Your Honor, I
18 didn't. I thought I did, but I didn't. And that's not good
19 enough.

20 And so my question is then, not to ask you to repeat
21 again that it's in rem. It's there is a judgment. And PG&E
22 was not a stranger to the lawsuit. And even if I accept your
23 drilling down into the weeds of the complaint and see parcel 2
24 is different from parcel 5, it's still a judgment that was
25 entered forty years ago. And what am I supposed to do about

1 that?

2 And bankruptcy courts don't undermine state court
3 final judgments as a matter of comity, among other things. So
4 even if I were to say, you know what, that superior court judge
5 got it wrong, he didn't or she didn't match PG&E up with parcel
6 2, what am I supposed to do about it? Nobody has brought an
7 action to declare that judgment in error except you and this
8 argument.

9 MR. LAMB: Your Honor, we're not saying that the
10 judgment is in error. The judgment is --

11 THE COURT: Okay, I got it.

12 MR. LAMB: The judgment is not as to PG&E. The
13 judgment is to the city and to the county, not to PG&E.

14 THE COURT: So go back to the question I asked Mr.
15 Jacobson at the outset. When this lawsuit was filed, PG&E was
16 the defendant. Where did it go? What happened to PG&E as a
17 defendant in that lawsuit when the judge entered the final
18 judgment? Did PG&E just disappear as a party or was it -- is
19 everyone bound by the interim determination in the judgment?

20 MR. LAMB: It dealt with it in relation to 5A and 5B,
21 which is what is part of the complaint and the judgment.

22 THE COURT: Okay. Okay.

23 Let's switch to the other motion, your motion, which
24 I'm denying and you accept as part of the tentative. Do you
25 agree with Mr. Jacobson that if I do not grant you judgment

1 across the board on this issue or I deny the other -- the
2 plaintiff's motion, that we should have a case management
3 conference now and talk about discovery on the limited issue of
4 the prescriptive easement?

5 MR. LAMB: Well, I think it would be the prescriptive
6 easement and the statute of limitations. But yes, Your Honor.

7 THE COURT: But I mean, that's part of it. I mean,
8 that -- that to me is what I call the prescriptive easement, is
9 that the 2001 bankruptcy statute of limitations, all the things
10 that go to the merits. In other words, if the issue of the
11 prior judgment had never come up and PG&E had shown up with its
12 power lines, when Mr. Shahmirza bought the property, we could
13 be having an actual about prescriptive easement. Did you
14 establish a prescription easement? And if so, did the statute
15 of limitations bar Shahmirza or Komir from challenging it, did
16 the prior bankruptcy affect it, et cetera, all the things that
17 are part of the bundle of rights that are -- we'll put under
18 the label prescriptive easement.

19 MR. LAMB: Yes.

20 THE COURT: Right? Yeah. In other words, you could
21 make a summary judgment on that argument if you want to or
22 something else. I have my own doubts about whether you've got
23 a strong argument there, because it seems to me -- I go back to
24 my point -- there's a -- it's not a prescriptive easement
25 because it's a permissive easement until 2018. And if we're

1 going to -- if we're going to put labels on easements, at the
2 minimum, it would seem to me PG&E had a permissive easement
3 until it moved the tower and allegedly changed the height of
4 the wires.

5 MR. LAMB: Your Honor, this is why it's so important
6 that I think we need to more fully adjudicate the issue of
7 whether or not they're valid easements in the first place,
8 because what counsel for Shahmirza keeps trying to say is he
9 doesn't want to call it a trespass. Because you've asked --
10 the Court has asked a number of times, well, what's the status,
11 what are we doing. He doesn't want to talk about that because
12 if it's an easement, it's an easement. And I think we need to
13 have that fully adjudicated.

14 THE COURT: Mr. Lamb, he made a motion for judgment.

15 MR. LAMB: Yes.

16 THE COURT: And the -- your opposition didn't raise
17 what you're now raising. Why should Mr. Jacobson now be told
18 you got to do it again? You made your motion and it was -- at
19 least on this issue was not opposed.

20 MR. LAMB: I don't agree that it wasn't opposed. If
21 you look at. --

22 THE COURT: It wasn't -- on the legal theory parcel 5
23 versus parcel 2, it wasn't raised.

24 MR. LAMB: We're not arguing about a legal theory,
25 Your Honor. We're arguing about the factual issues.

1 THE COURT: Okay.

2 MR. LAMB: That's the issue.

3 THE COURT: Mr. Lamb, what facts are in dispute on the
4 plaintiff's partial motion for judgment?

5 MR. LAMB: The facts that are dispute are the fact
6 that we have shown over time that this has been treated as an
7 easement and had been referred to as an easement in the record
8 by the State of California, by Mr. Shahmirza. And that all
9 confirms the fact that we have a recorded easement. There is
10 no question that the easement is recorded.

11 The only question is it's, you know, completely
12 expunged and extinguished, as counsel for Shahmirza claims.
13 And we believe it hasn't because we've consistently operated
14 this way. The State has looked at it that way. Up until after
15 2018, even Shahmirza didn't argue about that. And the initial
16 argument from the surveyor really incorporates a Chicago title
17 plat map, which we talked about, that specifically refers to
18 those easements. So we've always been dealing with these
19 easements.

20 And now basically what they're trying to say is that
21 because I want to narrowly review and take a look at this
22 judgment and I want to say you can't look at anything other
23 than the words of the judgment, which also still refer to other
24 things, that's dispositive. And it's not.

25 THE COURT: Okay.

1 MR. LAMB: And if we go through that process, we're
2 just going to be back there again.

3 THE COURT: Okay. Gentlemen, I am going to take the
4 matter under advisement.

5 We have a number of evidentiary objections. We have
6 this last-minute flurry about the vehicles parking and blocking
7 PG&E. I'm not sure I even have jurisdiction to deal with that
8 issue. But the point is, I'm not going to act on it. Mr.
9 Jacobson filed papers as late as last night. Mr. Lamb, you
10 filed your papers, Mr. Rupp, whoever filed them just early on
11 that. I haven't even absorbed all of them. Whether I -- and
12 I'll just deal with them.

13 So the motion for partial summary judgment by the
14 plaintiff, the Motion for summary judgment by PG&E, the
15 objections to the evidence both ways, and this last-minute
16 effort to raise the question of the vehicles or limousines or
17 whatever is blocking PG&E's access, those are matter all
18 submitted. I would hope that that some cooler heads could at
19 least come to a consensual resolution by the parties so that we
20 don't have the local police department out there refereeing
21 whether PG&E can get in to do what it has to do on the lines.

22 I can't -- as I say, I'm not even sure it's properly
23 before me. And on the other hand, I don't think sending you
24 off to Superior Court at this point is the right thing to do
25 either. So I'm just going to implore the parties to see if

1 they can come up with a short-term resolution to that immediate
2 problem. And I'll do my best to reflect on all the arguments
3 that have been presented today.

4 I appreciate the arguments and the representations on
5 the matter. So it stands submitted. Thank you for your time.
6 Anybody have a question? Mr. Jacobson?

7 MR. JACOBSON: Yes. With respect to this purported
8 issue about gate access, there are no moving pleadings.
9 There's nothing to take under submission with respect to that.
10 I filed papers in opposition to the supplemental reply brief
11 that made an argument to protect my record. But you'll see in
12 our papers there is no issue. They have a gate. They have
13 full access to it. This is a pure boogeyman. There's nothing
14 to it. But procedurally they need to file a motion of some
15 sort. I need to have an opportunity to file a response to a
16 motion that specifies what the issues and proof are. And it is
17 not set up for a decision.

18 THE COURT: Okay. But I said I haven't read them.
19 And if clearer heads prevail and the gate can get access so
20 PG&E can do what it believes needs to be done as a matter of
21 its normal course responsibilities, then let's hope that's the
22 case.

23 MR. JACOBSON: It doesn't need to get access. It has
24 access.

25 THE COURT: So again.

1 MR. JACOBSON: It doesn't need to get access. It has
2 access. I went out there myself yesterday morning and looked
3 at it.

4 THE COURT: Mr. Lamb do you agree that the company has
5 access?

6 MR. LAMB: Well, I haven't been out there today so --
7 or yesterday. So all I know is the photographs that I've seen
8 have all these limousines that are blocking the gate.

9 THE COURT: Well, Mr. Jacobson just said he had
10 access.

11 MR. JACOBSON: There's a different gate on the side
12 that is not owned by Komir. They've put in a gate. It's nice.
13 It's new. It's got landscape right up to it. I walked right
14 up to it and put my hand on the lock. I look at that -- I
15 could have swung the gate open if I had the key and walked
16 right into the substation. They have their own gate.

17 THE COURT: Okay. Gentlemen, thank you for your time.
18 Matter is submitted. All right.

19 MR. JACOBSON: Thank you.

20 MR. LAMB: Thank you, Your Honor.

21 THE COURT: I'm going to sign off. I'll thank my
22 staff. And I will talk to you all later.

23 (Whereupon these proceedings were concluded)
24
25

C E R T I F I C A T I O N

I, Michael Drake, certify that the foregoing transcript is a true and accurate record of the proceedings.



/s/ MICHAEL DRAKE, CER-513, CET-513

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Date: May 10, 2023

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